

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MINDEN SUE WHITE,

3:12-CV-01773-ST

Plaintiff,

ORDER

v.

AMEDISYS HOLDING, LLC, a foreign  
corporation, doing business as  
Amedisys Home Health Care; and  
CINDY BROCK, an individual,

Defendants.

Cross-Defendants.

**RALPH RAYBURN**

Rayburn Law Office  
4905 S.W. Griffith Drive  
Ste. 105  
Beaverton, OR 97005  
(503) 968-5820

Attorneys for Plaintiff

**AMY R. ALPERN**

**CRAIG L. LEIS**

Littler Mendelson, PC  
121 S.W. Morrison Street  
Ste. 900  
Portland, OR 97204  
(503) 221-0309

Attorneys for Defendants

**BROWN, Judge.**

Magistrate Judge Janice M. Stewart issued Findings and Recommendation (#13) by Order on December 18, 2012, in which she recommends the Court grant Plaintiff's Motion (#6) to Remand this matter to state court and award costs and attorneys' fees to Plaintiff. No objections to the Findings and Recommendation were filed.

This matter is before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

**BACKGROUND**

Plaintiff originally filed this action in Multnomah County Circuit Court for the State of Oregon alleging employment retaliation and discrimination claims against Defendants.

On October 1, 2012, Defendants filed a Notice of Removal to federal court based on the alleged diversity of citizenship of the parties even though Plaintiff and Defendant Brock are both alleged to be citizens of the State of Oregon. Defendants contend Plaintiff cannot state a claim against Brock and fraudulently joined Brock as a party-defendant in the original state-court action in order to preclude the complete diversity of citizenship necessary to establish federal-court jurisdiction under 28 U.S.C. § 1332.

Plaintiff filed the pending Motion to Remand this case to Multnomah County based on lack of diversity of citizenship because Defendant Brock was properly joined as a party-defendant. Plaintiff also seeks reasonable attorneys' fees incurred in filing this Motion.

The Magistrate Judge found Plaintiff alleged sufficient facts "to demonstrate a possibility that [Defendant] Brock could be found liable for aiding and abetting" Defendant Amedisys in violation of Oregon Revised Statute 659A.030(1), and, therefore, Brock was not fraudulently joined in this action for the purpose of obtaining subject-matter jurisdiction in this Court. In addition, the Magistrate Judge found Plaintiff also has alleged a basis for liability against Brock based on retaliation in violation of Oregon Revised Statute § 59A.030(1)(g).

In addition, the Magistrate Judge found Defendants did not have an objectively reasonable basis for removing this case to federal court, and, therefore, Plaintiff is entitled to an award of reasonable attorneys' fees pursuant to 28 U.S.C. § 1147(c).

Because no objection to the Magistrate Judge's Findings and Recommendation was timely filed, this Court is relieved of its obligation to review the record *de novo*. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*). See also *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988). Having reviewed the legal principles *de novo*, the

Court does not find any error in the Findings and Recommendation.

**CONCLUSION**

The Court **ADOPTS** the Magistrate Judge's Findings and Recommendation (#13) in its entirety, **GRANTS** Plaintiff's Motion (#6) to Remand this Case to state court, **AWARDS** Plaintiff the reasonable attorneys' fees and costs related to her Motion, and **REMANDS** this case to the Multnomah County Circuit Court for the State of Oregon.

IT IS SO ORDERED.

DATED this 7<sup>th</sup> day of February, 2013.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge